

**Part I of United States response to Notes Verbal  
CU 2012/28(A) and CU 2012/82(A)/DTA/CEB**

Part I addresses Articles 7-9 of the UN Convention against Corruption (UNCAC). The U.S. will submit Part II, which will address UNCAC Article 12, at a later date.

**1. Has your country adopted and implemented articles 7 – 9 of the UN Convention against Corruption?**

Yes

**2. Please cite, summarize and, if possible, provide copies of the applicable policy(ies) or measure(s):**

*In particular, the Secretariat would be grateful for information regarding policies or measures that:*

- *identify and address potential conflicts between the professional duties and personal interests of civil servants or elected public officials.*
- *require asset declarations from civil servants or those elected to public office (States parties are encouraged to provide examples of asset declaration forms where used).*

The program designed to prevent, detect, and if necessary, address conflicts of interest on the part of individual public officials generally has four parts: enforceable written standards; personal financial disclosures; training, education and counseling; and enforcement. Of course, this program complements enforceable, transparent, public administration systems particularly in the areas of procurement, internal financial controls, budget, and human resources.

**Enforceable, written standards.** At the federal level, the United States relies upon a series of criminal conflict of interest statutes, civil ethics statutes and administrative standards or codes of conduct to establish for public officials (and often for those in the private sector in their dealings with public officials) written, enforceable standards with regard to conflicts of interest.

In general, there are criminal statutes in chapter 11 of title 18 of the U.S. Code that specifically describe situations where an official may not engage in a particular conduct because it creates a conflict with his or her official duties or loyalty to the Government. The most generally applicable restrictions are found in sections 201-209 ([http://www.oge.gov/About/International-Activities/Docs/statutes\\_ogecomp/](http://www.oge.gov/About/International-Activities/Docs/statutes_ogecomp/)). These sections of title 18 of the U.S. Code are in the process of being translated into all six UN languages. By August 2012 they will be available at <http://www.oge.gov/About/International-Activities/Translated-Documents/>. None of the generally applicable criminal statutes prohibit the holding of a particular financial asset or a position outside the Government, but some do prohibit the receipt of compensation or anything of value for certain activities (from anyone other than the Government). The civil statutes (5 U.S.C. app. section 501 et. seq., available at <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/html/USCODE-2010-title5-app-ethicsing-titleV.htm>) do, however, prohibit the most senior political officials, all elected officials and all federal judges from engaging in certain types of activities or holding certain positions in their private capacities and from receiving more than a specified amount of outside

earned income, regardless of the activity performed for the income. These restrictions are similar in nature to the incompatibilities regimes found in other countries.

In the executive branch, the administrative Standards of Conduct (5 C.F.R. Part 2635, available at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=eaab3e76921028ab2de631c3f4b0f8a0&rgn=div5&view=text&node=5:3.0.10.10.9&idno=5>) complement these restrictions with general branch-wide restrictions as well as by allowing agencies (with approval from the U.S. Office of Government Ethics) to restrict further the outside activities and financial interests of their employees, when those restrictions are appropriately related to the functions of the agencies. The Standards of Conduct are in the process of being translated into all six UN languages. By August 2012 they will be available at <http://www.oge.gov/About/International-Activities/Translated-Documents/>. Agency supplemental regulations are found at 5 C.F.R. Parts 3101-8701. In addition, on January 21, 2009, President Obama signed an Executive Order, "Ethics Commitments by Executive Branch Personnel," that requires certain political appointees to sign an Ethics Pledge (available at <http://www.oge.gov/OGE-Advisories/Legal-Advisories/DO-09-003a--Attachment-to-DO-09-003,-Ethics-Pledge/>).

Each house of the legislative branch also has conduct standards. The Senate Code of Official Conduct is a part of the Standing Rules of the Senate. The Senate publishes a Senate Ethics Manual containing these provisions as well as guidance on their interpretation (see <http://ethics.senate.gov/public/index.cfm/ethicsrules>).

The United States House of Representatives (House) adopts a code of conduct as a part of its rules at the beginning of each Congress. The House also publishes a House Ethics Manual containing these provisions as well as guidance on their interpretation (available at <http://ethics.house.gov/>). In 1958, the House and the United States Senate (Senate) passed a concurrent resolution containing a Code of Ethics for Government Service. The House continues to expect its Members and employees to adhere to this Code.

In the judicial branch there are two primary codes of conduct: the Code of Conduct for United States Judges and the Code of Conduct for Judicial Employees (available at <http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct.aspx>).

In addition to written, enforceable standards there are three other aspects of a conflict of interest prevention program. They are public and confidential financial disclosure; education, training and counseling; and enforcement as a deterrent.

**Financial disclosure.** As required by the Ethics in Government Act of 1978, individuals who serve in the most senior positions of all three branches of Government are required to file a personal financial disclosure report upon entry into the senior position, annually and then upon leaving the senior position. These reports are available to the public upon request. Some of these reports are also available online.

In the executive branch, individuals in positions below senior level but which require the employee to make decisions or exercise significant judgment in activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity (i.e. contracting, procurement, federal benefits programs, audits) are required to file confidential financial disclosure reports with their employing agency. These reports are not available to the public but are reviewed for conflicts of interest by the employing agency. (In the executive branch there are approximately 28,000 public financial disclosure reports filed and 360,000 confidential financial disclosure reports filed annually. The number of filers is somewhat less than the number of reports filed because new entrant, annual, and termination report can overlap on occasion.). The OGE Form 278: Public Financial

Disclosure Report is available at <http://www.oge.gov/Forms-Library/OGE-Form-278--Public-Financial-Disclosure-Report/>. The OGE Form 450: Confidential Financial Disclosure Report is available at <http://www.oge.gov/Forms-Library/OGE-Form-450--Confidential-Financial-Disclosure-Report/>.

In the legislative branch Members of Congress and certain senior officers and employees within the legislative branch (generally determined by basic level of pay) are also required to file a public financial disclosure. Blank forms are available at <http://ethics.senate.gov/public/index.cfm/financial-disclosure-forms> and <http://ethics.house.gov/forms/information-and-forms>.

In the judicial branch, the following individuals are required to file: Chief Justice of the United States; Associate Justices of the Supreme Court; judges of the United States courts of appeals, United States district courts, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior; and judicial officers and employees whose basic rate of pay is at or above a specified threshold amount.

In addition, the following candidates for elected office and nominees for appointed office are required to file a disclosure: Candidates for election to the House or Senate; candidates for election to the Offices of President and Vice President; and most nominees to positions in all three branches that require nomination by the President and confirmation by the Senate (though in some instances a public report is not required for part-time positions).

Both the public and confidential financial disclosure reports are reviewed by the Government entity in which the individual serves, primarily for purposes of identifying potential or actual conflicts of interest. A conflict of interest is determined by applying the restrictions contained in the above-referenced statutes and standards in the context of the duties of the individual. When information on a financial disclosure report indicates an actual conflict of interest may have occurred, that matter is referred for further investigation and possible prosecution and/or administrative sanction. When information on a report indicates a potential conflict of interest, the employing entity works with the individual to determine appropriate steps he or she must take in order to avoid engaging in an activity that will change the potential for a conflict into an actual conflict. Such steps may include: divestiture of an asset, resignation from an outside position, termination of an outside activity, recusal from certain Government matters, change of official assignments or duties, written waivers, or the creation of a blind trust. The use of financial disclosure reports for this purpose is an integral part in the executive branch program for helping to prevent conflicts of interest.

For the highest officials of the executive branch, screening for conflicts using the financial disclosure report is more formalized. As a practice, each individual whom the President is considering appointing to a position in the executive branch which requires Senate confirmation, files, initially on a confidential basis, a draft copy of a financial disclosure report. That report is reviewed by the White House, the agency in which the individual would serve, and the Office of Government Ethics (OGE) in order to determine, if the individual were to be appointed, what steps that individual must take to avoid conflicts with the financial interests as well as those outside positions, relationships and activities in which the person engages listed on the report. The steps required may include one of or a combination of the following actions: divestiture of conflicting assets; resignation from positions; a public agreement to recuse from taking actions on certain specific matters that may come before the individual if appointed; and a blind trust. These actions are reduced to writing in an "ethics agreement." In general, the President does not nominate an individual before the OGE Director is satisfied that there has been disclosure of all financial and other interests required by law and that the individual has agreed to take the steps identified as necessary. Within five days of the President nominating an individual OGE transmits a certified

financial disclosure report and signed ethics agreement to the Senate committee considering the individual's nomination. Once the individual is appointed, OGE, with the agency in which the person now serves, monitors this agreement to ensure that the steps agreed upon have been taken by the individual including the divestiture of any conflicting financial interest within 90 days of appointment. For those filing publicly available financial disclosures, the prospect of the public's review of the report also helps to deter conflicts of interest. Copies of the certified public financial disclosure reports and corresponding ethics agreements for individuals who have been nominated by President Obama to executive branch positions requiring Senate confirmation may be obtained online at <http://www.oge.gov/Open-Government/Access-Records/Current-Executive-Branch-Nominations-and-Appointments/>.

**Training, education and counseling.** These functions are carried out in all three branches. In particular, in the executive branch, those individuals who file public and confidential financial disclosure reports are generally in positions that have the greatest potential for conflicts of interest. Therefore, these individuals are also required to have annual ethics training so that they are reminded of the standards that apply to them in carrying out their Government duties. (All new hires at any level of position are required to be provided with a copy of the standards of conduct and they may also receive in-person briefings or video or electronic educational materials.) In addition, each agency is required by OGE to have an ethics official or officials who are available to answer questions that any employee within the agency might have with regard to potential conflicts of interest or the application of any of the provisions of the standards of conduct, civil ethics statutes, or criminal conflict of interest statutes.

**Enforcement.** The Department of Justice enforces the criminal conflict of interest laws and the civil ethics laws for officials of all three branches through the institution of judicial proceedings. No federal official has general immunity from prosecution. The Department of Justice also enforces the criminal and civil penalties related to financial disclosure: failure to file a financial disclosure report can result in a civil monetary fine; filing a false financial disclosure report can result in a civil monetary fine or a criminal penalty (fine and/or imprisonment) depending upon the intent of the filer.

On the non-criminal and non-civil side, the standards of conduct in the executive branch have administrative penalties which can include reprimand, suspension, demotion, transfer and firing. (Administrative sanctions are imposed by the agency which employs the individual who has been found to have violated the administrative code of conduct following standard personnel procedures for imposing discipline.) As noted earlier, OGE also follows up to ensure that Presidential appointees who have entered into ethics agreements have taken the steps promised. OGE also reviews individual agency ethics programs to ensure that they are being carried out in a proper fashion and cooperates closely with officials within the Inspector General community and the Department of Justice who carry out the investigative and prosecutorial functions.

With regard to the legislative branch, Section 5 of Article I of the U.S. Constitution provides that each House of Congress (the Senate and the House) is responsible for determining the qualifications of its Members; for determining its rules of proceedings; for punishing its Members; and, with the concurrence of two-thirds of the Members, for expelling a Member. Each House of Congress has a committee that addresses the conduct of Members and staff and provides advisory services and education regarding the standards to which Members and staff are to adhere. The responsible committee in the Senate is the Senate Select Committee on Ethics. The responsible committee in the House is the House Committee on Standards of Official Conduct.

In the judicial branch, the President, pursuant to the U.S. Constitution, appoints Justices and judges within the federal court system by and with the advice and consent of the Senate. Justices and judges receive a lifetime appointment without diminution of pay and can only be removed by Congress after

impeachment by the House and trial in the Senate. In addition to the impeachment process, procedures for filing and responding to complaints against judges are prescribed by statute, 28 U.S.C. 315-364. Actions the court system may take against a judge include private or public reprimand or censure, request for voluntary retirement, suspension of case assignments, and certification of disability of a judge to hold office. If appropriate, the Judicial Conference may transmit to the House a determination that consideration of impeachment may be warranted. Employees of the judicial branch are subject to disciplinary action, including removal. The Judicial Conference Committee on Codes of Conduct renders advisory opinions concerning the application and interpretation of the Codes of Conduct for United States Judges and for Judicial Employees. (The Judicial Conference is a body of 27 federal judges, composed of the following: the Chief Justice of the United States, who serves as the presiding officer; the chief judges of the 13 courts of appeals; the chief judge of the Court of International Trade; and 12 district judges from the regional circuits who are chosen by the judges of their circuits to serve terms of three years).

- *allow and encourage members of the civil service to report acts or suspected acts of corruption. States parties are encouraged to provide specific examples such as training, publicity campaigns, information on the existence and operation of whistleblower hotlines, etc.;*

Executive branch: The Standards of Conduct state at 5 C.F.R. 2635.101(b)(11) that “Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.” Appropriate authorities for employees can include supervisors, agency ethics officials, an office within the Office of Special Counsel (a separate executive branch agency), or appropriate investigative authorities such as an agency’s Inspector General. Additionally, all executive branch agency heads are required, pursuant to 28 U.S.C. 535, to report to the U.S. Attorney General or his delegates any information, allegation, or complaint received in their respective agency regarding a violation of the U.S. criminal code by an executive branch officer or employee. An executive branch employee who is fully aware of fraud, waste, abuse, or corruption and fails to report the misconduct is subject to administrative discipline.

Within the executive branch, there is an extensive system of Inspectors General, who have investigative responsibility for identifying fraud, waste, and abuse within the individual federal agencies. Most federal agencies have Offices of Inspectors General, who function as internal “watchdogs” for the agency and are responsible for conducting most of the investigations into government wrongdoing at the respective agency. Almost all Offices of Inspector General have hotlines that invite employees to report fraud and abuse over the telephone. Anonymous “tips” are accepted. The numbers for the hotlines are often posted throughout the workplace. These hotline tips enable investigators to promptly address allegations, in some instances while the wrongdoing is ongoing.

The U.S. Office of Special Counsel (OSC) serves as one safe conduit for the receipt and evaluation of whistleblower disclosures from federal employees, former employees, and applicants for federal employment (5 U.S.C. § 1213). Whistleblowers may file a disclosure claim either on-line, via fax, or mail. The OSC’s Disclosure Unit reviews five types of disclosures specified in the statute: violations of a law, rule or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; and a substantial and specific danger to public health or safety (5 U.S.C. § 1213(b)). For more information visit <http://www.osc.gov/wbdisc.htm#>

Legislative branch: The Code of Official Conduct for the House says that a Member, officer, or employee of the House of Representatives “shall conduct himself at all times in a manner that shall reflect creditably on the House.” In addition, Members, officers, and employees are expected to adhere to the 1958 Code of Ethics for Government Service, which requires them to “Expose corruption wherever

discovered.” On the Senate side, Resolution 338 of the 2<sup>nd</sup> Session of the 88<sup>th</sup> Congress, as amended, says the Senate Select Committee on Ethics shall “receive complaints and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, violations of the Senate Code of Official Conduct and violations of rules and regulations of the Senate.” The expectation in the Senate of good-faith compliance with the Senate Code of Official Conduct could also encompass the expectation that a Member, officer, or employee would report acts of corruption of which he was aware.

Judicial branch: Canon 3 of the Code of Conduct for Judicial Employees includes the following language: “A judicial employee should report to the appropriate supervising authority any attempt to induce the judicial employee to violate these canons.”

**3. Please provide examples of the successful implementation of domestic measures adopted to comply with articles 7 – 9 of the Convention:**

*States parties may wish to include case studies or specific examples of the following:*

- *the successful identification of conflicts of interest between the professional duties and personal interests of public officials and the process used to resolve such conflicts.*
- *the identification of potential conflicts of interest through the use of an asset declaration form and action taken as a result.*

Below are a few examples of implementation, organized by UNCAC article and paragraph:

Article 7. paragraphs 1. and 1 (a)

As a good practice, many executive branch agencies include ethics materials, such as a copy of the Standards of Ethical Conduct for Employees of the Executive Branch, with job offer letters provided to prospective employees. This practice not only informs prospective employees of practical ethics issues before they begin work at the agency, but also raises awareness of the ethics program and promotes an ethical culture within the agency.

Financial disclosure is a fundamental tool for identifying and remedying actual or potential conflicts of interest (see the above response to question number two for details on the federal financial disclosure program). As a model practice, some executive branch agencies require that prospective employees timely complete and file their new entrant financial disclosure reports as a condition of employment. The appropriate financial disclosure form and instructions are included in prospective employees' job offer materials. Contact information for ethics officials is also included in case the prospective employee has questions or needs assistance in filling out the report.

Article 7. paragraphs 1., 1 (b), and 1 (d)

As noted above in response to question number two, individuals who file public or confidential financial disclosures (senior officials or those in positions with enhanced risk of conflicts of interest) are required to receive annual ethics training. As a good practice, several executive branch agencies require that *all* employees receive annual ethics training, regardless of whether they file financial disclosures. Many agencies offer training through a variety of methods, including in-person and online.

To encourage employees to seek ethics advice, agencies often hang posters in the workplace that provide the agency ethics official contact information.

Agencies create a variety of ethics training and counselling resources for their employees. For example, the U.S. Department of Agriculture (USDA) has online “self-help” guides that allow users to answer a series of yes/no questions to receive a tailored explanation of what ethics rules may apply under specific circumstances (<http://usda-ethics.net/selfhelp/index.htm>). For other examples of USDA ethics training and counseling visit <http://usda-ethics.net/>.

Many agencies maintain agency-specific ethics websites. A few examples include: Department of Defense ([www.dod.mil/dodgc/defense\\_ethics/](http://www.dod.mil/dodgc/defense_ethics/)), Department of Justice ([www.justice.gov/jmd/ethics/](http://www.justice.gov/jmd/ethics/)), and the National Institutes of Health (<http://ethics.od.nih.gov/>).

The U.S. Office of Government Ethics (OGE) offers several resources such as pamphlets, videos, crossword puzzles, and posters to raise awareness about ethics rules. Federal employees can use this information to supplement annual ethics training or to educate themselves on novel issues. This material is meant to complement the advice and counsel that agency ethics officials provide (<http://www.oge.gov/Education/Education-Resources-for-Federal-Employees/Education-Resources-for-Federal-Employees/>).

OGE also annually awards agencies that have demonstrated a strong commitment to ethics education and communication; created a stronger ethical culture as a result of these efforts; utilized model practices to encourage understanding and awareness of ethical behaviours; and produced education and communication products that were innovative, creative, transferable, and successful. For a list of recent award recipients, including detailed descriptions of agency education practices visit <http://www.oge.gov/Education/Program-Excellence-and-Innovation-Awards/OGE-s-2010-Education-and-Communication-Award-Winner-s-Circle/>.

In fiscal year 2011, OGE held the 18th National Government Ethics Training Conference - “Organizational Integrity: A Shared Responsibility”. This intensive training conference was attended by 850 Executive Branch ethics officials, employees of and Inspectors General, representatives of the international community, and, in keeping with the training conference theme, human resource and IT officials who also play a key role in ethics programs. At the conference, OGE developed and presented an extensive range of training modules on topics as varied as emerging ethics issues, program management, continuity and succession planning, the perspectives of private sector and good governance organizations, program support, and ethics education. OGE showcased these topics in 64 breakout sessions and 24 innovative “Learning Lab” sessions, which provided a novel framework for high-level, informative and engaging dialogue about the entire range of complex topics.

The conference also included a virtual training conference for ethics officials who were unable to attend; a comprehensive smart-phone “APP” and dedicated conference website through which attendees could view the conference agenda, course materials, handouts, and participants’ contact information. Ninety-seven percent of APP users at the training conference used that tool to enhance their training conference experience. An at-speed alternative reality exercise used to bring training conference attendees together in competition while providing a novel approach to expanding professional networks, gathering and applying knowledge learned at the conference, identifying ethics program model practices, facilitating discussions on various ethics topics, and learning about alternative training methods. (For more information visit <http://www.oge.gov/Education/National-Government-Ethics-Conference/2011-National-Government-Ethics-Conference-Program/>.)

Article 8. paragraph 1.

All Federal civil servants take an oath of office by which they swear to support and defend the Constitution of the United States of America. Through the oath, employees swear to faithfully discharge the duties of office (see [http://www.opm.gov/constitution\\_initiative/oath.asp](http://www.opm.gov/constitution_initiative/oath.asp)).

This requirement is expanded in the executive branch standards of conduct in its very first principle: “Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.”

#### Article 8. paragraph 5.

See the above discussion (in response to question number two) on the conflict of interest review that occurs for prospective Presidential appointees. Copies of the certified public financial disclosure reports and, as appropriate, corresponding ethics agreements for individuals who have been nominated by President Obama to executive branch positions requiring Senate confirmation may be obtained online at <http://www.oge.gov/Open-Government/Access-Records/Current-Executive-Branch-Nominations-and-Appointments/>.

In fiscal year 2011, OGE analyzed and reviewed the financial disclosure reports and resolved potential conflicts of interests of approximately 300 potential presidential nominees, as well as several dozen public financial disclosure reports of high-level officials serving in the White House and in the Office of the Vice President. These reviews included resolving financial disclosure issues and negotiating ethics agreements to address actual and potential conflicts of interest on the part of senior leaders in the Executive Branch.

#### Article 9. paragraph 1.(e)

In the executive branch, agencies typically require procurement officials to file confidential financial disclosures to ensure that contracting decisions are made free from bias. These individuals are required to receive annual ethics training. In addition, the Office of Federal Procurement Policy has developed common certification programs that generally reflect a government-wide standard for education, training, and experience leading to the fulfilment of core competencies in a variety of acquisition-related disciplines. (See [http://www.whitehouse.gov/sites/default/files/omb/assets/procurement/fac\\_contracting\\_program.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/procurement/fac_contracting_program.pdf) and <http://www.whitehouse.gov/sites/default/files/omb/procurement/revisions-to-the-federal-acquisition-certification-for-contracting-officers-representatives.pdf>). Procurement personnel have a variety of avenues for certification and training. For instance, both the Federal Acquisition Institute and the Defense Acquisition University have learning resources to assist Government agencies in ensuring the acquisition workforce is adequately trained on responsibilities and fundamental contract rules and regulations, including the rules related to ethics and integrity in procurement ([www.dau.mil](http://www.dau.mil) and [www.fai.gov](http://www.fai.gov)).

- *the reporting by a public official of an act of corruption through mechanisms established in accordance with the provisions of the Convention.*

Most agencies allow any individual, including public officials, to report fraud, waste, or abuse via an online complaint form, email, toll-free phone numbers, mail, or fax. A list of agency IG website links and contacts is located at <http://www.ignet.gov/igs/homepage1.html>. Examples of specific agency reporting mechanisms include: the Department of Commerce (<http://www.oig.doc.gov/Pages/Hotline.aspx>), the Department of Agriculture

(<http://www.cpb.org/oig/functions/hotline.html>), and the Department of Energy (<http://energy.gov/ig/services>).

Inspectors General semi-annually submit reports to the Congress that describe the work of the OIG within the reporting period. These reports may include summaries of complaints received by the IGs and the status of the resulting investigations. In addition, Inspectors General frequently file public reports on the results of investigations conducted as the result of a report made by a public official.

In addition to agency-specific reporting mechanisms, there are initiative-specific reporting mechanisms. For instance, the American Recovery and Reinvestment Act of 2009 (Recovery Act) responded to the economic crisis by providing \$787 billion in tax benefits, entitlement programs, and funding for Federal contracts, grants and loans. On [www.recovery.gov](http://www.recovery.gov), individuals, including public officials, can track how and where Recovery Act funds are spent and report suspected fraud, waste, or abuse related to Recovery funding.

The U.S. Office of Special Counsel may order an agency head to investigate and report on a whistleblower disclosure. After any such investigation, the Special Counsel must send the agency's report, with the whistleblower's comments, to the President and Congressional oversight committees. For copies of those reports visit <http://www.osc.gov/FY%202012%20A.html>

**4. Have you ever assessed the effectiveness of the measures adopted to implement articles 7 – 9? Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized.**

*States parties may wish, in particular, to provide information in relation to assessments of the effectiveness of measures aimed at:*

- *identifying and resolving conflicts of interest in the public sector,*
- *the identification of potential conflicts of interest by requiring the completion of asset declarations by public officials.*

Below are a few examples of how the U.S. has assessed effectiveness of implementation, organized by UNCAC article and paragraph:

Article 7. paragraphs 1.(b) and (d), and 4.

The U.S. Office of Government Ethics (OGE) administers the executive branch ethics program, which is designed to prevent conflicts of interest. While OGE establishes the overall program design, the day-to-day activities of the program are carried out by the ethics officials within each executive branch agency. Since 1980, OGE has conducted program reviews of individual agency ethics programs to help ensure that the services provided by the agency to its employees (for example, financial disclosure collection and review; training, education and counseling; and disciplinary measures, when appropriate) are being carried out properly. Copies of the program review reports are available at <http://www.oge.gov/Program-Management/Program-Review/Program-Review-Reports/Program-Review-Reports/>.

OGE also solicits annually information from each agency with regard to a number of topics for example, amount of resources used by the agency in carrying out its program, number of financial disclosure filers, number of individuals involved in the ethics program, number of disciplinary actions taken and number of matters referred for prosecution. The information is used for two basic purposes: the first is to help

inform OGE audit staff before conducting an agency program review, and the second as a compilation to help provide OGE with an overall picture of the executive branch ethics program.

For individual projects, OGE has used focus groups and single issue audits. For example, OGE recently benchmarked the ethics programs cabinet-level agencies and regulatory agencies to determine the extent to which agencies have incorporated factors critical to the success of ethics program management (leadership, awareness, resources, and oversight). (See [http://www.oge.gov/Program-Management/Program-Management-Resources/Special-Reports/A-Vision-for-Ethics-Program-Management--Benchmarking-Success-\(PDF\)/](http://www.oge.gov/Program-Management/Program-Management-Resources/Special-Reports/A-Vision-for-Ethics-Program-Management--Benchmarking-Success-(PDF)/) and [http://www.oge.gov/Program-Management/Program-Management-Resources/Special-Reports/A-Vision-for-Ethics-Program-Management--Benchmarking-Success-Phase-Two-\(PDF\)/](http://www.oge.gov/Program-Management/Program-Management-Resources/Special-Reports/A-Vision-for-Ethics-Program-Management--Benchmarking-Success-Phase-Two-(PDF)/))

Through a variety of survey mechanisms, including the annual agency ethics survey, OGE measures the effectiveness of its program. For instance, in fiscal year 2011:

- 96% of ethics officials rated OGE guidance as useful
- 85% of ethics officials viewed OGE's program review process as adding value to their own programs
- 87% of ethics officials were satisfied with education and training provided OGE to support ethics officials

Additional statistics on effectiveness are found in OGE's Performance and Accountability Report for Fiscal Year 2011 ([http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/OGE-Strategic-Plans-\(FY-2007-2011\)/](http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/OGE-Strategic-Plans-(FY-2007-2011)/)).

#### Article 8. paragraph 5.

In addition to the fact that filing a financial disclosure report is a requirement for certain service at the Federal level, administrative, civil, and criminal penalties related to late filing, failure to file, and false filings, have provided strong incentive for filers to submit information completely, accurately, and on time. In terms of enforcement results, filers can be criminally liable for false statements on the financial disclosure reports. The United States Department of Justice can use the reports to help prove corruption cases or can prosecute criminal falsification. Such prosecutions may be useful if a corrupt act is suspected but would be difficult to prove.

With regard to annual filings, the most recent annual OGE survey indicated that of the 28,078 public reports required to be filed in 2010, only 295 had not yet done so when the agencies answered the survey. Executive branch agencies also reported collecting the \$200 late filing fee from 60 individuals who filed their public financial disclosure reports after the date triggering the fee. In cases where a filer does not submit the report, agencies are required to make additional good-faith attempts at securing the report (during which the time the \$200 late filing fee is triggered) and, if unsuccessful to refer the case to DOJ for a failure to file. Examples of prosecutions using false statements made on financial disclosure reports are found in the published prosecution surveys noted in the text below.

#### Article 8. paragraph 6.

None of the three branches of the U.S. Federal Government has in place a method by which to measure, through statistical information, the preventive role of the standards and codes of conduct to which officer and employees are expected adhere. However, each of the three branches has used administrative standards of conduct to discipline successfully and appropriately employees including Presidential appointees, regular civil servants, judges, judicial branch employees, Members of Congress, and congressional employees. As an example of public information with regard to these types of measures, the House Committee on Standards of Official Conduct at the end of each Congress

(every two years) publishes a Summary of Activities for that Congress that includes information with regard to individual cases. The Senate publishes a similar report every January. In the executive branch, agencies maintain evidence of administrative disciplinary action in individual employee personnel files kept by the employing agency rather than in a more centralized system. Each year OGE surveys executive branch agencies with regard to disciplinary actions (including removals, demotions, suspensions, and written reprimands) based wholly or in part upon violations of the Standards of Conduct. The agencies make good-faith efforts at supplying this information, but OGE considers the data to be approximate. With that caveat, agencies reported taking over 2,711 disciplinary actions during 2010 based on the Standards of Conduct.

OGE has for a number of years surveyed the Department of Justice and the 94 U.S. Attorney's Offices asking for information about the cases they have prosecuted citing Sections 203-209 of Title 18 and, more recently, financial disclosure. Responses to the surveys are voluntary, so while OGE has compiled and published the results each year, those results may not reflect all such cases for that year. The compilations for 1990 onward are available on OGE's Web site (<http://www.oge.gov/Topics/Enforcement/Conflict-of-Interest-Prosecution-Surveys/>)

- *the facilitation and promotion of the reporting of acts of corruption by public officials and*

Some Inspectors General include in their Annual Performance Plan metrics regarding the timely review of whistleblower complaints. Most agencies have dedicated web pages for the agency's office of Inspector General which include links to performance plans. A list of agency IG website links and contacts is located at: <http://www.ignet.gov/igs/homepage1.html>.

As noted in its fiscal year 2011 Performance and Accountability Report, the U.S. Office of Special Counsel's efforts paid off in the form of a fairer and more accountable federal workplace. In the Disclosure Unit, over 900 whistleblower disclosures were received, 47 of which were referred to agency heads for investigation and report.

OSC improves the efficiency and accountability of government in many ways and, significantly, it returns large sums to the Treasury. The agency receives over 900 disclosure complaints from federal whistleblowers every year, many of which result in enormous direct returns to the government. Four cases alone in just the past few years restored well over \$11 million to the government. This amount, while substantial, grossly understates the financial benefit OSC brings to the government. The real measure of OSC's financial contribution is prophylactic: By providing a safe channel for whistleblower disclosures, OSC regularly reins in waste, fraud, abuse, illegality, and threats to public health and safety that pose the very real risk of catastrophic harm to the public, and huge remedial and liability costs for the government. OSC cases come from throughout the federal government. The agency has recently confirmed allegations made by whistleblowers in ten different departments and agencies. (See <http://www.osc.gov/documents/gpra/PAR%20FY%202011.pdf>.)

## **5. Which challenges and issues are you facing in (fully) implementing articles 7 – 9 of the Convention?**

*States parties may particularly wish to provide details of challenges faced when implementing practices or policies relating to conflicts of interest, reporting acts of corruption and the use of asset declarations including:*

- *technical challenges such as the design, development or drafting of new policies, practices and measures.*

- *communication challenges such as the ability to disseminate, publicise and promote the new policy or practice both to public officials and the public more broadly.*
- *implementation challenges such as the ability to enforce or otherwise encourage adherence to new or existing policies or practices by public officials.*

The U.S. does not have any specific challenges to report at this time.

**6. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?**

*States parties are encouraged to provide a description of any such assistance already being provided and by whom.*

No.